

## **FINAL STATEMENT OF REASONS**

The information contained in the Initial Statement of Reasons (ISOR) at the time of the Public Notice remains unchanged with the exception of the following modifications.

### **Section 72517**

#### **Subparagraph (c)**

In response to two public comments, the California Department of Public Health (Department) has clarified which facility personnel must complete the required training. The Department struck language that required a “physician and surgeon” to complete the training and replaced this deletion with the more specific “medical director, directly employed by a facility.” This change reflects that facilities do not employ physician and surgeons outside of the role of medical director. Residents rely on outside physicians and surgeons, who are not employed by the facility, to provide medical care. This change adds specificity to this regulation clarifying which personnel must complete the required training.

In response to a public comment, the Department has added the term “actual or perceived” prior to the term “sexual orientation” and added the term “gender identity” in the first sentence. The revision clarifies the training requirement to ensure that the training is comprehensive in scope and reflects the diversity of the LGBT elder population. In addition, the Department made a grammatical change in the first sentence replacing the connector “or” with “and” in recognition of the interplay between the terms “gender identity” and “gender expression.”

#### **Subparagraph (c)(1)(D)**

In response to a public comment, the Department has replaced “his or her” with “the person’s” in the definition of transgender. The Department adopted this change to improve the accuracy and inclusiveness of the definition.

#### **Subparagraph (c)(1)(E)**

In response to public comment, the Department proposes amending subparagraph (c)(1) to include a definition of “gender identity.” The enabling statute, Health and Safety Code Section 1257.5, requires the term “gender identity” to have the same meaning as in Penal Code Section 422.56. However, the Penal Code does not define “gender identity.” The previous version of this proposed regulation substituted the definition of “gender expression” as defined in California Penal Code Section 422.56. The Department has separated these concepts and proposes a new definition for “gender identity.” This amendment provides greater specificity about concepts and themes that must be included in the required training.

#### **Subparagraph (c)(2)(A)**

In response to a public comment, the Department proposes amending subparagraph (c)(2)(A) to include the concept of “gender identity” along with “sexual orientation,” and “gender expression” as terminology that should be included in the required training. The Department makes this change based on additional information provided by public comment that clarified that “gender identity” was an essential term that must also be

defined and explained to provide staff with the necessary understanding of LGBT elders' needs and the discrimination they face in the medical environment.

**Subparagraph (c)(2)(B)**

In response to a public comment, the Department proposes a non-substantive word choice change to replace "ways" with "methods." In addition, the Department proposes changing the language requiring that staff receive training about vocabulary regarding gender identity and respecting residents' pronouns in order to provide clarity.

**Subparagraph (c)(2)(C)**

In response to a public comment, the Department proposes revised language clarifying the professional obligation for staff to provide care to transgender residents in a manner that is sensitive to their needs and is medically appropriate. The revised language provides greater clarity by requiring the training curriculum to describe the unique discrimination faced by transgender persons and emphasize the obligation to provide medical care in a sensitive and responsive manner.

**Subparagraph (c)(2)(E)**

In response to a public comment, the Department proposes revised language that better defines the obligation staff members have to provide residents with care in a nondiscriminatory manner and the consequences of failing to provide nondiscriminatory care.

**Subparagraph (c)(2)(F)(iii)**

In response to a public comment, the Department proposes revised language that broadens the content of the training related to marriage and domestic partnership rights of residents. The Department recognizes that the previous language may have been under-inclusive and not reflect all rights available to LGBT residents under both California and federal law.

**Subparagraph (c)(2)(F)(iv)**

In response to a public comment, the Department proposes revised language that would require the training to include information about residents' rights under the Nursing Home Reform Act. The Department recognizes that the Nursing Home Reform Act provides several specific antidiscrimination protections for residents that should be included as part of the curriculum outlining a resident's right to be free of discrimination because of their LGBT status.

**ATTACHMENTS TO THE FINAL STATEMENT OF REASONS**  
**ADDENDUM I**  
**45 Day Public Notice**  
**Summary of Comments and Responses to Comments Received**

LIST OF COMMENTERS (WT - Written Testimony)

1. California Hospital Association (CHA), Patricia Blaisdell	WT
2. California Association of Health Facilities (CAHF), Lisa Hall	WT
3. West Covina Medical Center (WCMC), Guadalupe Ojeda	WT
4. Services and Advocacy for Gay, Lesbian, and Transgender Elders (SAGE), John Wyand	WT
5. Private Citizen, Daniel Redman	WT

1. **Comment Subject:** Requiring all Physicians Working in a Skilled Nursing Facility or Congregate Living Health Facility to Complete the LGBT Training.

**Commenter(s):** CHA, CAHF

**Comment:** CHA urges CDPH modify the language to replace “physicians and surgeons” with “medical director” in § 72517(c).

CHA argues that “inclusion of all physicians in this requirement is not feasible, as attending physicians are not under the direction of the facility and patient access to the physician of their choice may not be limited.”

CAHF raises similar concerns about requiring physicians to receive the training. CAHF stresses that facilities do not employ physicians and those physicians who do practice within the facility are under a contract agreement with the facility.

CAHF suggests defining “employee” as “any individual who is required to receive training by this regulation is hired by another to perform a service for wages or salary and is under the employer’s control. This does not include any physician or consultant contracted with the facility or any physician whose only purpose is to manage the medical plan of his or her residents.”

**Department Response:** In response to two public comments, the Department has clarified which facility personnel must complete the required training. The Department struck language that required a “physician and surgeon” to complete the training and replaced this deletion with the more specific “medical director, directly employed by a facility.” This change reflects that facilities do not employ physician and surgeons outside of the role of medical director. Residents rely on outside physicians and surgeons, who are not employed by the facility, to provide medical care. This change adds specificity to this regulation clarifying which personnel must complete the required training.

2. **Comment Subject:** Issues Regarding Duplication of Existing State and Federal Provisions that Require Patient Dignity or Provide Patients with Specified Rights.  
**Commenter(s):** CAHF, WCMC

**Comment:** CAHF expresses concern that this training requirement duplicates state requirements that protect patients' right to dignity in the health care facility (Title 22 Section 72527(a) and federal requirements that protect patients' right of dignity (CFR 483.15(a)).

WCMC also raises a similar concern that because current training requirements focused on elderly populations, further training focused on the unique issues of LGBT elders is not necessary. Specifically, the Chief Nursing Officer argues " [i] do not believe that a specific training be mandated for LGBT people, because this would identify them as a special or minority "group" and they are not – they are just like everyone else."

**Department Response:** These comments are non-responsive. CDPH is required to develop regulations effectuating the training mandate established by the legislature. The discrimination suffered by LGBT elders in the health care settings has been extensively documented. This discrimination results in LGBT elders having worse health and health care outcomes than similar non-LGBT elders. Training staff to reduce or eliminate, discrimination against LGBT elders in healthcare settings will improve health and health outcomes for these individuals.

**3. Comment Subject:** Questions and Concerns About Aspects of the Training Required.

**Commenter(s):** CAHF

**Comment:** CAHF posed several questions about the training program, including:

- A) What are the entities that can provide training?
- B) Will there be a list of suitable entities?
- C) Will CDPH be making materials available?
- D) Would facilities' staff who already provide training to staff, such as the Director of Nurses, the Director of Staff Development, and the Nurse Consultant, be able to provide the training?
- E) Will there be approved websites for training and who will pay the cost associated with the training?

**Department Response:**

- A) This training will be available from several entities who meet the criteria established by this rulemaking. It would be inappropriate for the Department to produce a list of entities capable of providing this training as such a list will be incomplete as more entities offer this training. In addition, if the Department were to create a list of providers it may appear to authorize or endorse a specific provider which would be inappropriate.
- B) See above.
- C) No, there is adequate training available from non-department sources.
- D) No, they are not an "entity with expertise" as defined in § 72517(c)(3).
- E) No, approving specific websites is not contemplated in this regulation. Training costs will be responsibility of the facility.

- 4. Comment Subject:** Clarifying Amendment  
**Commenter(s):** SAGE  
**Comment:** SAGE requests a deletion and amendment in § 72517(c), line one, which would now read as: “At least once every two years, a facility shall ensure that each registered nurse, licensed vocational nurse, certified nurse assistant, and physician and surgeon receives training designed to eliminate and prevent discrimination based on sexual and ~~or~~ gender expression.”  
**Department Response:** The Department made a grammatical change in the first sentence replacing the connector “or” with “and” in recognition of the interplay between the terms “gender identity” and “gender expression.”
- 5. Comment Subject:** Clarifying Amendment  
**Commenter(s):** SAGE  
**Comment:** SAGE requests an amendment to § 72517(c)(2) that would read as “At a minimum, the training required under section (c) shall address the following minimum standard.”  
**Department Response:** The Department rejected these changes as redundant. The regulations are a minimum standard and do not prohibit a facility from conducting a more comprehensive or extensive training of these topics.
- 6. Comment Subject:** Clarifying Amendment  
**Commenter(s):** SAGE  
**Comment:** Sage proposes the following modification of § 72517(c)(2)(B): “Ways Methods of communicating with or about LGBT individuals.”  
**Department Response:** The Department accepted this comment and made this change.
- 7. Comment Subject:** Addition of Information About AIDS Survivors to Curriculum.  
**Commenter(s):** SAGE  
**Comment:** SAGE proposes the following amendment to § 72517(c)(2)(C): “The training shall also address the health risks faced by transgender persons from long-term hormone use and reconstructive surgery and information on long-term HIV survivors.”  
**Department Response:** The statute underlying this regulation does not require training about information on long-term HIV survivors. Establishing such a requirement in this rulemaking would exceed the scope of the underlying statute. Therefore, the Department rejects this proposed change.
- 8. Comment Subject:** Nursing Home Reform Act Rights Added to the Curriculum.  
**Commenter(s):** SAGE  
**Comment:** SAGE proposes the following amendment to § 72517(c)(2)(F): “(iv) Nursing Home Reform Act.”  
**Department Response:** The Department has included this proposed amendment. The Nursing Home Reform Act provides vital protections to LGBT elders in SNFs and ICFs. The rights provided by the Nursing Home Reform Act should be communicated to those personnel who are required to complete the training.

**9. Comment Subject:** Clarifying Who Can Provide Training

**Commenter(s):** SAGE

**Comment:** SAGE proposes the following amendment to § 72517(c)(3): “The training shall be taught by an individual credentialed by an entity with expertise...”

**Department Response:** The Department rejected this proposed amendment because it created ambiguity as to the sufficiency of internet-based trainings. The adoption of this amendment could be interpreted as a requirement that the required training be conducted in person rather than by an internet-based training. Requiring in-person training would create an unnecessary burden on small and rural facilities which may only be able to comply with this regulation through web-based training.

**10. Comment Subject:** Requiring an Instructor’s Signature Upon the Completion of Training

**Commenter(s):** SAGE

**Comment:** SAGE proposes the following amendment to § 72517(c)(4)(A): “The use of in-person training requires proof of participant attendance in the form of a certificate signed by the participant and the participant’s supervisor, and instructor.”

**Department Response:** The Department rejected this proposed amendment because this requirement would make it appear that only in-person trainings could be used to satisfy the training requirement. Requiring in-person training would create an unnecessary burden on small and rural facilities which may only be able to comply with this regulation through web-based training.

**11. Comment Subject:** Requires All Professionals in a Facility to be Fully Trained in Order to Fulfill the Training Requirement.

**Commenter(s):** SAGE

**Comment:** SAGE proposes the following amendment to § 72517(c)(5): “A facility and each professional specified in this section (c) shall be in full compliance with this subsection prior to or on August 1, 2018.”

**Department Response:** The Department rejects this proposed amendment. The Department has the authority to regulate health care facilities but not licensed professionals in the course of their practice. It is unclear that there is a distinction is between “compliance” and “full compliance.”

**12. Comment Subject:** Addition of “Gender Identity” and “Cultural Education.”

**Commenter(s):** SAGE

**Comment:** SAGE proposes that every reference in the proposed rules where “gender expression” is referenced the term “gender identity” is also added. SAGE also proposes that every reference to “social education” be followed by “cultural education” through the text.

**Department Response:** The Department has partially adopted the proposed amendment related to “gender identity” as this change provides clarity to a key concept. The Department rejects the proposal related to “cultural education” as the term is not used in the underlying statute or the regulations text and does not need to be defined.

- 13. Comment Subject:** Addition of “Actual or Perceived” as a Qualifier, “Gender Identity,” “Gender Nonconformity,” and “HIV status” to Training Curriculum.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes modifying § 72517(c) to appear as follows: “At least once every two years, a facility shall ensure that each registered nurse, licensed vocational nurse, certified nurse assistant, and physician and surgeon receives training designed to eliminate and prevent discrimination based on actual or perceived sexual orientation, gender identity, or gender expression, gender nonconformity, or HIV status.”  
**Department Response:** The Department has added the term “actual or perceived” prior to the term “sexual orientation” and added the term “gender identity” in the first sentence. The amended regulation clarifies the training requirement to ensure that the training is comprehensive in scope and reflects the diversity of the LGBT elder population. The Department did not add the term “gender nonconformity” or “HIV status” as including these concepts would exceed the Department’s rulemaking authority under the applicable statute.
- 14. Comment Subject:** Defining Gender Expression.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes the following amendment to § 72517(c)(1)(A): Gender expression “means a person’s gender-related appearance and behavior whether or not stereotypically associated with person’s assigned sex at birth, as defined in California Civil Code Section 51.”  
**Department Response:** The Department has rejected the proposed amendment as this level of specificity is not required to understand the concept of gender expression which is well defined in the regulations.
- 15. Comment Subject:** Transgender Definition Cleanup.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes the following amendments to § 72517(c)(1)(D): “Transgender” describes ~~a person~~ persons whose gender expression or gender identity is different from that typically associated with ~~his or her~~ their assigned sex at birth.  
**Department Response:** The Department rejected the substitution of “a person” with “persons” as it added confusion to the definition. The Department replaced “his or her” with “the person’s” in the definition of transgender. The Department adopted this change in order to improve the accuracy and inclusiveness of the definition.
- 16. Comment Subject:** New Section, How to Determine Gender Identity.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes the adoption of a new section that would be numbered § 72517(c)(1)(E): “Gender Identity” has the same meaning as defined in the California Civil Code Section 51. A person’s gender identity shall be determined based on the individual’s stated gender identity, without regard to whether the self-identified gender accords with the individual’s physical appearance, surgical history, genitalia, legal sex, sex assigned at birth, or name and sex as it appears in medical records, and without regard to any contrary

statement by any other person, including a family member, conservator, or legal representative. An individual who lacks the present ability to communicate regarding gender identity shall retain the gender identity used by that individual prior to losing expressive capacity.

**Department Response:** The Department amended subparagraph (c)(1) to include a definition of “gender identity.” The enabling statute, 1257.5 HSC, requires that the term “gender identity” have the same meaning as in 422.56 Penal Code. However, the Penal Code does not define “gender identity.” The previous version of this proposed regulation substituted the definition of “gender expression” as defined in California Penal Code Section 422.56. The Department has separated these concepts and proposes a new definition for “gender identity.” This amendment will provide greater specificity about concepts and themes that must be included in the required training.

**17. Comment Subject:** Definition of “Transition.”

**Commenter(s):** Mr. Redman

**Comment:** Mr. Redman proposes the adoption of a new section that would be numbered § 72517(c)(1)(F): “Transition” means to undergo a process by which persons change their physical sex characteristic and/or gender expression to match their inner sense of being male or female. This process may include, among other things, a name change, a change in pronouns, and change in social gender expression as indicated by hairstyle, clothes, and restroom use. Transition may or may not include hormone use and surgery.”

**Department Response:** The Department has rejected this proposed amendment. The term “transition” is not used in these regulations and it would therefore be unnecessary to include it in the defined terms.

**18. Comment Subject:** Definition of “Gender Nonconforming.”

**Commenter(s):** Mr. Redman

**Comment:** Mr. Redman proposes the adoption of a new section that would be numbered § 72517(c)(1)(G): “Gender nonconforming” means a person whose gender expression does not conform to stereotypical expectations of how a man or woman should appear or act.”

**Department Response:** The Department has rejected this proposed amendment. The term “gender nonconforming” is not used in these regulations and it would therefore be unnecessary to include it in the defined terms.

**19. Comment Subject:** Conformity with Earlier Proposed Amendments.

**Commenter(s):** Mr. Redman

**Comment:** Mr. Redman proposes amendments that would conform with his other proposed changes in §72517(c)(2)(A) as follows: “Definitions of common terms, including but not limited to those in subsection (c)(1), associated with sexual orientation, gender identity, gender nonconformity, HIV status, and gender expression and explanations and examples of sexual orientation, gender identity, gender nonconformity, HIV status, and gender expression.”

**Department Response:** The Department amended subparagraph (c)(2)(a) to include the concept of “gender identity” along with “sexual orientation,” and “gender expression” as terminology that should be included in the required

training. The Department makes this change based on information provided through public comment. This information that clarified that “gender identity” was an essential term that must be defined and explained to provide staff with the necessary understanding of LGBT elders’ needs, was given due to the discrimination faced by LGBT elders in the medical environment. The Department did not include the concepts of “gender nonconformity” or “HIV status” as these concepts would exceed the Department’s rulemaking authority under the applicable statute.

**20. Comment Subject:** Clarification on Training related to Communicating with LGBT Individuals.

**Commenter(s):** Mr. Redman

**Comment:** Mr. Redman proposes amendments which would recast requirements requiring terminology in §72517(c)(2)(B): “Ways of communicating with or about LGBT individuals. The training shall address the importance of using LGBT individuals’ preferred terminology when addressing or speaking about them and shall include a segment on the use of suitable pronouns when ~~addressing or speaking about transgender persons.~~ vocabulary regarding gender identity and gender nonconformity, including respecting residents’ pronouns.”

**Department Response:** In response to a public comment, the Department proposes a non-substantive word choice change in which “ways” is replaced by “methods.” In addition, the Department also proposes changing the language of the requirement that staff receive training about vocabulary regarding gender identity and respecting residents’ pronouns in order to provide clarity. The Department did not include the concept of “gender nonconformity,” as including this concept would exceed the Department’s rule making authority under the applicable statute.

**21. Comment Subject:** Clarification of the Training Focused the Unique Health Needs of Transgendered Elders.

**Commenter(s):** Mr. Redman

**Comment:** Mr. Redman proposes amendments which would clarify §72517(c)(2)(C): “The health and social challenges historically faced by older LGBT persons, including discrimination on the healthcare setting. The training shall include information on the history of discrimination and hostility directed toward LGBT persons and shall include information about LGBT persons’ reluctance to seek medical treatment because of a fear of discrimination. The training shall also specifically address the ~~health risks faced by transgender persons from long term hormone use and reconstructive surgery.~~ discrimination faced by transgender people and the importance of providing and facilitating medical care and treatment that is sensitive and responsive to a resident’s gender identity and gender expression.”

**Department Response:** The Department adopted revised language clarifying the professional obligation for staff to provide services to transgender residents in a manner that is sensitive to their needs and is medically appropriate. The revised language provides greater clarity by requiring the training curriculum describe the unique discrimination faced by transgender persons as well as

emphasizing the positive obligation to provide medical care in a sensitive and responsive manner.

- 22. Comment Subject:** Requirement for Training on the Nondiscrimination Obligation of Health Care Personnel.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes amendments which would clarify §72517(c)(2)(E): “Ways to create a safe and affirming environment, ~~with emphasis on the importance of leaving personal feelings outside medical encounters and behaving in a nondiscriminatory way,~~ the legal and professional obligation to treat all patients in a nondiscriminatory manner, and the penalties for failing to meet legal and professional standards.”

**Department Response:** In response to a public comment, the Department partially rejects and partially accepts the proposed language. The language the Department has adopted better defines the obligation staff members have to provide residents with care in a nondiscriminatory manner and the consequences of failing to provide nondiscriminatory care.

- 23. Comment Subject:** Technical Clean Up.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes amendments which would clarify §72517(c)(2)(F)II to read: “The Unruh Civil Rights Act at section 51 of the Civil Code; and ”.  
**Department Response:** The Department adopted this revised language which was necessary in order to make the changes found in §72517(c)(2)(F).

- 24. Comment Subject:** Clarification of Training Related to Marriage and Domestic Partnership Laws.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes amendments which would clarify §72517(c)(2)(F)III to read: “~~California marriage and domestic partnership laws~~ [m]arriage and domestic partnership laws for residents of California: and”.  
**Department Response:** The Department adopted revised language that is more inclusive as to the content of the training in relation to marriage and domestic partnership rights of residents. The Department recognizes that the previous language may have been drafted in such a way as to be under-inclusive and not reflect all rights available to LGBT guaranteed residents under both California and federal law.

- 25. Comment Subject:** Discriminatory Actions Prohibited Under California and Federal Law.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman proposes adding a new section to §72517(c)(2)(F) numbered (IV) that would read: “[a]ctions prohibited under California and/or federal law if taken wholly or partially on the bases of a person’s actual or perceived sexual orientation, gender identity, gender expression, gender nonconformity, or HIV status:”

- a. Deny admission to a long-term care facility; transfer or involuntarily discharge a resident within a facility or to another facility; or evict or involuntarily discharge a resident for a facility;
- b. Deny a request by residents to share a room;
- c. Where rooms are assigned by gender, assign or refuse to assign a room to a transgender resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request;
- d. Involuntarily reassign a resident to a different room based on any person's complaint or concerns about that resident's gender identity or gender expression;
- e. Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom available to other persons of the same gender identity, regardless of whether the resident is making a gender transition or appears to be gender nonconforming. Harassment includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom available to other persons of the same gender identity;
- f. Refuse to use a resident's correct name or pronoun, as indicated by the resident;
- g. Deny a resident the right to wear or be dressed in clothing, accessories, or cosmetics that are permitted by any other resident;
- h. Restrict a resident's right to associate with other residents, including the right to sexual intimacy;
- i. Deny a resident's right to receive or restrict a resident's right to associate with visitors of the resident's choice, including the right to sexual intimacy;
- j. Deny or restrict medical or non-medical care that is appropriate to a resident's organs and bodily needs, or provide medical or non-medical care in a manner that demeans the resident's dignity or causes avoidable discomfort.

**Department's Response:** The Department rejects the proposed amendment. The proposed language establishing these protections does not yet exist in statute and it is premature to establish these requirements in regulations. This proposed amendment is also outside the scope of the statute that these regulations are being enacted to clarify and add specificity. Including these provisions would violate the procedures established in the rulemaking process.

**26. Comment Subject:** Requirement for Training on Privacy.

**Commenter(s):** Mr. Redman

**Comment:** Mr. Redman proposes adding a new section to §72517(c)(2)(F) numbered (V) that would read: "[t]he Health Insurance Portability and Accountability Act and the California Confidentiality of Medical Information Act, and how these laws protect the personally identifiable information of residents regarding their sexual orientation, whether a resident is transgender, a resident's transition history, and a resident's HIV status".

**Department Response:** The Department rejects the proposed amendment contained in the comment. Facility staffs are currently required to complete training related to information privacy and patient confidentiality. The addition of such a requirement here is duplicative.

**27. Comment Subject:** Requirement for Visual Privacy Protections for LGBT Residents of Long Term Care Facilities.

**Commenter(s):** Mr. Redman

**Comment:** Mr. Redman proposes adding a new section to §72517(c)(2)(F) numbered (VI) that would read: “[p]rivacy protections for LGBT residents, in that persons not directly involved in providing personal or medical care to a transgender or gender nonconforming resident shall not be present during case discussions, physical examination, treatment, or the provision of personal care to that resident without the express permission of that resident. Facilities shall use doors, curtains, screens, or other effective visual barriers to provide bodily privacy to transgender or gender nonconforming residents whenever such residents are partially or fully unclothed. In addition, LGBT residents shall be informed and have the right to refuse to be examined, observed or treated by an facility staff when the primary purpose is educational or informational rather than therapeutic, and such refusal shall not diminish the resident’s access to care for the primary purpose of diagnosis or treatment.”

**Department Response:** The Department rejects the proposed amendment. The proposed language establishing these protections does not yet exist in statute and it is premature to establish these requirements in regulations. This proposed amendment is also outside the scope of the statute that these regulations are being enacted to clarify and add specificity. Including these provisions would violate the procedures established in the rulemaking process.

**ADDENDUM II**  
**15-Day Public Notice**  
**Summary of Comments and Responses to Comments Received**

- 1. Comment Subject:** Additional Definitions.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman comments:” [t]he proposed regulations do not include definitions for “Transition” and “Gender Non-Conformity.” Misunderstanding of these two concepts is a key cause of discrimination against transgender residents of care facilities. We urge you to reconsider and to include these proposed revisions.”  
**Department Response:** The Department has rejected this proposed amendment. The terms “Transition” and “Gender Non-Conformity” are not used in these regulations and it would therefore be unnecessary to include it in the defined terms.
- 2. Comment Subject:** Failure to Identify Discriminatory Behavior.  
**Commenter(s):** Mr. Redman  
**Comment:** Mr. Redman comments: “The proposed regulations do not include a list of discriminatory actions that are prohibited by California law. The types of discrimination that LGBT people face are documented in reports like NSCLC’s “Stories from the Field.” **To prevent and eliminate discrimination, facility staff must first be able to identify it.** When facility staff don’t know what’s prohibited, they’re more likely to make a mistake or harm a resident. A training program must include real-world examples and case scenarios to be effective. To mandate a training that instructs a facility to “not discriminate” without explaining what that looks like will not be effective.”  
**Department Response:** The Department has made no changes based upon this comment. The Department’s goal is provide effective training which eliminates discrimination against LGBT residents in facilities. The Department had determined that the most effective method of conducting this training is to provide knowledge and focus on professional obligations for licensed employees. Creating a list of discriminatory behavior would by its very nature be both over inclusive and under inclusive while not being as effective as the methods adopted. Finally, Mr. Redman’s proposed list is duplicative of the list contained in SB 219. It is premature to include these requirements as part of this rulemaking as this bill has not become law as of the end of the comment period.
- 3. Comment Subject:** Pending Legislation.  
**Commenter(s):** Mr. Redman  
**Comment:** Senator Scott Wiener and Assemblymember David Chiu’s bill, SB 219 (“Lesbian, Gay, Bisexual, and Transgender Long-Term Care Facility Resident’s Bill of Rights”) is currently in the Assembly. If signed into law, it will clarify the discriminatory actions that are prohibited under California law. If all laws are signed by the Governor by October 15, this should leave sufficient time for DPH to include the text of SB 219’s prohibitions in the regulations. It

would be a shame to work so hard on these regulations and then have SB 219 immediately make them anachronistic. If DPH is not inclined to include examples of discrimination in the training program because of uncertainty about those particular examples, we urge DPH to wait until SB 219's fate is decided so that regulations can be promulgated that reflect current law."

**Department Response:** The Department has not delayed this rulemaking based upon this comment. The Department is conducting this rulemaking to implement current statute. It is unnecessary to delay this rulemaking because of potential changes brought by potential passage of SB 219. The provisions of this proposed legislation can, if necessary, be incorporated into these regulations in the future. The Department anticipates no conflict between these regulations and the current provisions of SB 219. As such, delaying this rulemaking at this time is unnecessary.